RANCHO MILPITAS

Box .....
Index No. .....

This Abstract MUST be returned at once to
JAS. A. CLAYTON & CO.

ABSTRACT OF TITLE
OF PROPERTY OF

Hatch & Bowden
"Milpitas Ranch"

ABSTRACT OF TITLE

TO

Lot 5 of the partition of the Milpitas Rancho.

COUNTY OF SANTA CLARA,
STATE OF CALIFORNIA,
As Shown by the Records of said County.

Dated March 31 *1902*

Made at the Request of

J. A. Clayton & Co.

San Jose Abstract Company,
Bank of San Jose Building,
SAN JOSE, CALIFORNIA.

San Jose Abstract Co.

Henry Harris and
Mary Harris
to
Catharine Kelly.

Deed.

Dated Feby 7. 1863

Consd $600=

Do remise, release and quitclaim unto the said party of the second part and to her heirs and assigns forever, all the following described tract of land, lying and being in the County of Santa Clara, in the State of California and bounded as follows: Commencing on the southeast by a tree marked H ~~standing~~ saining land owned by Charles Blake, south and west by the Penitencia Creek to land occupied by Harris, thence along the Mission Road to the place of beginning, being a portion of the Milpitas Ranch containing Twenty six (26) Acres more or less.

(Sgd) Henry Harris (Seal)
Mary Harris (Seal)

Ackd by Henry Harris and
Mary Harris [illegible] Feby 23 [illegible]

Before George M. [illegible] R. P.

Recorded Feby 23, 1863

Liber "Q" of Deeds page 507.

Joseph Kelly and his wife,
Catharine Kelly
to
Joseph Scott.

Mortgage

Dated June 16, 1863.

To secure payment of $200=00
Mortgage. Commencing on the southeast by a tree marked H joining land owned by Charles Clark, South and west by the Penitencia Creek to land occupied by Harris, thence along the Mission Road to the place of beginning being a portion of the Milpitas Ranch, containing Twenty six (26) Acres more or less.

Sgnd Joseph Kelly
Catk Kelly

Acknd June 16. 1863
Before Wm E. Spencer, N.P.

Recorded June 16. 1863
Liber "F" Mortgages page 89.

Satisfied in full on margin of record Aug 24. 1863 by Joseph Scott and duly attested by the County

Abstract of Title.

To

All that tract of land,set apart to Joseph Kelly and Catherine Kelly,his wife,by the Final Decree in Partition in the action of Frederick Crighton et al vs.James C.Gould,et al,No.2882.

Subsequent to April 26th,1869 the date of the filing of the Complaint in said action.

In the District Court of the Third Judicial District in the County of Santa Clara, State of California.

Frederick Crighton

Tito de la Roza

Juana G.Urridias

John Sinnott

Wm.Gulnack and his wife

Maria de Jesus Gulnack,

Michael Hughes, and his wife

Ellen Hughes,

Augustus Rathbon

Bartolo Sepulveda, and his wife,

Maria de los Angeles Sepulveda

Dolores Narvaez and his wife

Augustina Narvaez

Joseph Kelly and his wife

Catharine Kelly,

vs.

James C.Gould and his wife,

Isabella Gould

Edmund Welch, William Welch

Robert Welch, John Powers,

James T.Boyd, Martin Murphy

Guy Douglass, Guadalupe Narvaez

John Trimble, Mary Young,

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C.S.Towle and his wife Sarah J.Towle,
C.S.Towle,as the Administrator of the
Estate of Robert P.Young,deceased,
Albert E.Young, Jas.F.Young,
Elizabeth V.Young, Mary Greer,
Henry Harris,David S.Boyce,Alfred Jones,
C.H.H.French,David Oliveri,
John Doe and Richard Roe.

Reg.E.Page 396 Case 2882.

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April 26 Complaint filed, To Obtain a Decree of Partition of all that tract of land lying and being in the County of Santa Clara and known as the Rancho Milpitas or San Miguel, bounded as follows:

Beginning at a point in the Penitencia Creek,the same being the North Westerly corner of said Rancho,as surveyed by J.S.Stratton,United States Deputy Surveyor and finally approved by the United States Court:and running thence up and along the middle of said Creek the following courses and distances,viz: South 56 1/2° E.13.60 chs.South 1 3/4° E.23 chs. S.30°E.22 chs:S.37 1/2° W.20 chs:S.54°E.27 chs:S.17 3/4° W. 23 chs.S.8 1/4° E.17 chs: S.24°W.16 chs:S.4 1/2° W.34 chs: S.29 1/2° E.16 chs:S.18 chs:and thence leaving said creek N. 58 1/2° E.339.50 chs:thence N.30 1/2° W.113.20 chs and thenc S.74 1/2° W.268.07 chs.to the place of beginning. Contain-

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ing 4457.66 acres of land: saving,excepting and excluding therefrom the following described part and parcel of said Rancho,to wit: Commencing at three oaks,one of which is marked H.standing (or which stood on 28th day of October 1853) on the East bank of the Arroyo Penitencia 2 yards North of a large stump: thence running South 50°02' East 124.96 chs to a stake on what was supposed in October 1853 to be the Southern line of said Milpitas Rancho:thence South 77°35' West 107.10 chains to the Penitencia Creek:thence down and along the centre of said Penitencia Creek to the place of beginning and being the same premises conveyed to S.O.Houghton on the 28th day of Oct.1853 by Juana Galinda,widow of Jose Maria Alviso and others recorded in the Records of Santa Clara County in Book F.of Deeds,page 445, And also excepting therefrom a strip of land running through said Rancho 60 feet wide and known as the Western Pacific Railroad Track and containing 8.84 acres of land.

C.T.Ryland,Attorney for Plaintiffs.

N O T E:

Notice of pendency of action recorded in the Office of the Recorder of Santa Clara County on April 26th. 1869 in Liber 1 of Lis Pendens,page 102

April 27 Summons issued.

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April 30 Answer of defendants James C.Gould and Isabella Gould filed.

May 1 Answer of defendant Guy Douglass filed.

" 3 Answer of defendant Henry Harris filed.

" 5 Summons filed on return.

Endorsed: Office of the Sheriff of the County of Santa Clara:

I hereby certify that I received the within Summons on the 29th day of April A.D.1869 and personally served the same on the 30th day of April A.D.1869 on the within named Defendants John Trimble and Jose Antonio Narvaez,Guardian of Guadalupe Narvaez,his son,a minor, by delivering to each a true copy of said Summons personally at the County of Santa Clara,State of California, I also served the said Summons on the same day on the said Defendant Guadalupe Narvaez a Minor by delivering to him,said defendant personally,in the said County of Santa Clara,State aforesaid-a copy of said summon attached to a certified copy of the Complaint.

Dated,San Jose,this 30th day of April A.D.1869

J.H.Adams,Sheriff,

J.C.Gould,Deputy Sheriff.

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May 8	Answer of defendant Mary Ann Young filed.
" 10	Answer of Defendant James T.Boyd filed.
" "	Answer of defendant C.H.H.French filed.
" "	Answer of defendant David S.Boyce,filed.
" 11	Motion and Order appointing John H.Moore guardian ad litem of minor defendant Guadalupe Narvaez.
" 12	Answer of defendant Guadalupe Narvaez by John H.Moore his guardian ad litem filed.
" "	Answer of defendant C.S.Towle and his wife Sarah J. Towle,Albert E.Young,James F.Young,Elizabeth V.Young and Mary Greer filed.
" "	Answer of defendant John Trimble filed.
" 18	Notice of appearance of L.Archer as the Attorney of Edmund Welch,William Welch,Robert Welch and John Powers filed. Service accepted May 18th,1869 by Attorney for Plffs.
" "	Answer of defendant Martin Murphy filed.

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May 18 Motion and Order dismissing Cause as to defendants Alfred Jones, David Oliveri, John Doe & Richard Roe.

" " Cause argued and submitted and decree ordered to be entered.

" " Interlocutory Decree filed.

Adjudges that all of the Plaintiffs and all of said defendants except Henry Harris, D.S.Boyce, C.H.H.French, C.S. Towle, Sarah J.Towle, his wife, Alfred E.Young, James F.Young, Elizabeth V.Young and Mary Greer are the owners and tenants in common and are in possession of the premises described in the complaint, to wit:

(Describes property as in the Complaint making same exceptions).

That the whole tract of land so held in common and to be divided contains 3941.06 acres, originally granted by the Mexican Government to Jose M.Alviso now deceased, in 1853, and from whom said Juana G.Urridias inherited one third and each of his children, to wit: Maria Josefa Alviso, wife of Jesus M. Castro, Maria Carmen Alviso, wife of Jose A.Narvaez, Augustina Alviso wife of Dolores Narvaez, Inocencia Alviso wife of Tito de la Rosa, Maria Antonia Alviso wife of Jose L.Narvaez, Javier Alviso, Juan Jose Alviso, Maria J.Alviso, wife of Wm.Gulnack and Maria de Los Angeles Alviso, wife of Bartolo Sepul-

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veda inherited one ninth of two thirds thereof: and thatsaid land can be partitioned.

That Frederick Crighton is the owner of an undivided $\frac{1}{3941.06}$ thereof, or one acre.

That the said F.Crighton and Tito de la Rosa are the owners jointly of an undivided $\frac{291.93}{3941.06}$ thereof or 291.93acres

That the said Tito de la Rosa is the owner of an undivided $\frac{327.93}{3941.06}$ thereof or 327.93 acres.

That said Juana G.Urridias is the owner of an undivided $\frac{537.43}{3941.06}$ thereof or 537.43 acres.

That said John Sinnott is the owner of an undivided $\frac{540.93}{3941.06}$ thereof or 540.93 acres.

That said Wm.Gulnack and his wife Maria de J.Gulnack are the owners of an undivided $\frac{291.93}{3941.06}$ thereof.or 291.93 acres.

That said M.Hughes and his wife Ellen Hughes are the owners of an undivided $\frac{103.50}{3941.06}$ thereof or 103.50 acres.

That said A.Rathbon is the owner of an undivided $\frac{4}{3941.06}$ thereof or 4 acres.

That said Bartolo Sepulveda and his wife Maria Los Angeles are the owners of an undivided $\frac{35}{3941.06}$ thereof or 35 acres.

That said Dolores Narvaez and his wife Augustina are the owners of an undivided $\frac{10}{3941.06}$ thereof or 10 acres.

That said Joseph Kelly and his wife Catharine Kelly are

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. the owners of an undivided $\frac{26}{3941.06}$ thereof or 26 acres.

That said J.C.Gould and his wife Isabella Gould are the owners of an undivided $\frac{50}{3941.06}$ thereof or 50 acres, to be selected and taken by him out of that portion of said Rancho which may be set off as the third going to the widow of said J.M.Alviso, deceased, and lying and being situate in the valley and as near as practicable the premises now in the occupancy of said Goulds and on which they have erected valuable improvements.

That said Edmund Welch and Wm.Welch are the joint owners of an undivided $\frac{283.93}{3941.06}$ thereof, or 283.93 acres.

That said John Powers and Robert Welch are jointly the owners of an undivided $\frac{216.93}{3941.06}$ thereof, or 216.93 acres.

That Jas.T.Boyd is the owner of an undivided $\frac{0.50}{3941.06}$ thereof or one half acre to be located on that portion of said premises on which the French Hotel, so called, is situated, described as follows, viz: Commencing at a stake at the junction of the road leading from Milpitas to Alviso and the Penitencia Creek: running thence Northerly 25 yards to a stake thence Easterly 60 yards to a stake on the Westerly line of the road passing through Milpitas to the Mission of SanJose: thence Southerly along said road 40 yards to a stake at the corner of the road leading from Milpitas to Alviso: thence Westerly 60 yards to the place of beginning.

That said Martin Murphy is the owner of an undivided

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990.86 thereof or 990.86 acres.
3941.06

That Guy Douglass is the owner of an undivided 15/3941.06 thereof or 15 acres, to be located as near as practicable where his improvements are situated in the Valley and taken out of the interest inherited by Maria Josefa Castro wife of Jesus M.Castro.

That said Guadalupe Narvaez is the owner of an undivided 122.93/3941.06 thereof, or 122.93 acres, being the interest inherited by his mother Maria Carmen Alviso after deducting there out 109 acres to be selected by Tito de la Rosa and 52 acres to be selected by John Sinnott.

That said John Trimble is the owner of an undivided 76/3941.0 thereof or 76 acres to be located as near as practicable where his improvements and possessions are situated.

That said Mary Ann Young is the owner of an undivided 15.25/3941.06 thereof or 15.25 acres to be selected out of the third of said Rancho hereinafter to be set off as the third inherited by Juana G.Urridias from her former husband Jose Maria Alviso deceased, the original grantee and to be located so as to cover as near as practicable the land in her possession and on which her improvements are situated.

That Henry Harris has a lien by way of mortgage on the right, title and interest of the said Plaintiff Juana G.Urridias of, in and to said premises to secure the payment of $600.oo with interest thereon after due to wit: Sept.14,1870

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1 1/2°/° per month and the Court orders that said mortgage be continued as a lien on the divided interest and share of said Juana G.Urridias as the same may be set off and partitioned to her.

That the plaintiff Juana G.Urridias holds a lien by way of mortgage on the interest of said Bartolo Sepulveda and his wife Maria de Los Angeles in said premises to secure the payment of $400.oo with interest at 2°/° per month from Oct. 24th,1868

That the defendant David S.Boyce is lessee and tenant of Michael Hughes,of that portion of said Rancho described as follows,viz: fronting 100 feet,more or less,on the road leading from the City of San Jose to the Mission of San Jose Westerly by the Penitencia Creek:Northerly by land in the occupancy of Gleeson:and South by lands in possession of said Hughes,for the term of three years from October 2nd, 1867 with right of renewal.

That defendant C.H.H.French is a lessee and tenant of said Michael Hughes and that he has a lease of that portion of said Rancho described as follows: Bounded on the East by the County Road:on the North by lands of A.Weller:on theWest by lands in possession of said Hughes:on the South by lands occupied by one Valpy,containing about 1 acre of land,for the term of 3 years from and after Oct.18th,1869

That the said Rancho Milpitas be partitioned among the

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parties hereinbefore decreed to be the owners thereof and that their respective interests therein be apportioned and set apart to them inseveralty, in the proportion hereinbefore set forth and ascertained.

That John Reed (surveyor) John O'Toole and Thomas Harrison be and they are hereby appointed Commissioners of this Court to make partition of said premises.

That said Commissioners first divide as far as practicable, without injury to said owners, the valley portion of said Rancho: and that there be segregated and set off as near as practicable, to said Juana G. Urridias, the widow of Jose M. Alviso deceased, and those claiming under her, except Joseph Kelly and Catharine Kelly and John Trimble, the Northernthird or portion of said Rancho, less the interest of said Kelly and wife and 36 acres of the Trimble interest.

And that out of said third there be set off to said Jas T. Boyd, the tract on which his improvements are located and hereinbefore described.

That there be set off to said James C. Gould and his wife Isabella Gould, out of said third the 50 acres in the valley, on which his improvements are situated on the Southerly side of the travelled road leading from Milpitas to the Calaveras Valley.

That there be set off to Frederick Crighton out of said one third, one acre on which his improvements are located.

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That there be set off to Tito de la Rosa out of said one third,2 acres on which his improvements are located.

That there be set off to Michael Hughes and his wife Ellen Hughes out of said one third 103 1/2 acres,on which his improvements and those of his lessees are located.

That there be set off to said Augustus Rathbon out of said one third 4 acres on which his improvements are located

That there be set off to Dolores Narvaez and his wife Augustina Narvaez out of said one third 10 acres,on which their improvements are located.

That there be set off to Bartolo Sepulveda and hiswife Maria de los Angeles 35 acres on which their improvements are located.

That there be set off to John Simott out of said one third,205 acres on which his improvements are located as near as practicable and which is described as follows,to wit Bounded on the North by the road leading from Milpitas to Calaveras Valley:on the East by the field formerly occupied by N.Harris:on the South by the field of said Simott and on the West by the road to Oakland: Also 52 acres to be selected by said Simott out of the share of said Rancho inherited by Maria del Carmen Narvaez from her father Jose Maria Alviso,deceased.

That there be set off to Mary Ann Young out of said one third 15 1/4 acres on which her improvements are situated.

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That there be set off to Joseph Kelly and Catharine Kelly and deducted from the said one third of said widow, 26 acres on which their improvements are located as near as practicable so as to cover and include the lands in their possession.

That there be set off to John Trimble 76 acres, the tract on which his improvements are located, 36 acres of which 76 shall be deducted from the said one third of said Juana G. Urridias and 8 acres each from the interest inherited by Maria Josefa de Castro, Maria Carmen Alviso de Narvaez Augustina Alviso de Narvaez, Inocencia Alviso de Sosa and Maria Antonio de Narvaez.

That there be set off to Martin Murphy out of said one third, so inherited by said Juana G. Urridias 288 acres.

That there be set off to said Rosa 109 acres out of the share inherited by Maria Carmen Narvaez from her father Jose M. Alviso, the same to be selected by said Rosa out of said share.

That none of the defendants E.S. Towle, Sarah J. Towle, his wife, Elizabeth V. Young, Anbert E. Young, James F. Young and Mary Greer have any interest, right, title or share of in or to said premises herein described or any portion thereof.

Directs said Commissioners to report their acts and doings on or before Sept. 1st, 1869.

Done in open Court May 18th, 1869

(Signed) S.B. McKee, Judge.

SAN JOSE ABSTRACT TITLE & TRUST CO.
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1869	
Sept.6	Report of Commissioners filed.
" "	Account of Commissioners filed.
" 18	Final Decree in Partition rendered, entered and filed.

Ordered, Adjudged and Decreed that the Report of the Referees be in all things approved and confirmed and the partition of said premises and the allotments made by the Referees to the respective parties hereto be and the same are hereby decreed and adjudged final and effectual forever.

That the several parties hereto to whom shares or portions of said premises have been allotted and set apart by said Referees shall henceforth forever have, hold, own, possess and enjoy in severalty the portions of said premises which have been allotted and set apart to them respectively by said Referees, to wit:

To Joseph Kelly and his wife Catharine Kelly jointly all that part of said Rancho described as follows:

Beginning at a tree marked H. Standing on the East bank of the Penitencia Creek and running thence North 11° West 6.50 chains to fence on West side of Road from Milpitas to San Jose: thence along West side of said Road North 18 1/2° West 33.05 chains to post marked K. and N. thence South 61 1/2° West 37 links to middle of the Penitencia Creek: thence up and along the middle of said creek to the place of beginning.

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1869	
	Containing 32.31 acres and marked on Map as Lot No.5.
	(and to other parties other portions).
	(Dated) Sept.18th,1869.
	(Signed) S.B.McKee,Judge.
	Decree recorded in Judgment Book E.page 91
Sept.18	Roll filed. Decree Docketed.
" "	Memorandum of Costs and Disbursements filed.
	N O T E: A Certified copy of above Decree was recorded inthe Office of the Recorder of the County of Santa Clara on October 16th,1869 in Liber C.of Miscellaneous, page 428

United States of America

To

Heirs of Jose Maria Alviso,

Deceased,

PATENT.

Dated June 30th, 1871

Do give and grant unto the said Heirs of Jose Maria Alviso, deceased and to their heirs the tract of land known as the "Milpitas Rancho" (describing it) and containing 4457.66 acres.

But with the stipulation that the confirmation of this said claim and this patent "shall not affect the interest of third persons."

To Have and To Hold the said tract with the appurtenances unto the said Heirs of Jose Maria Alviso Deceased, and to their heirs and assigns forever, with the stipulations aforesaid.

(Signed) By the President U.S.Grant,

U.S.General Land Office Seal) By J.Parrish, Secretary.

C.B.Boynton, Recorder of the General Land Office.

Recorded Vol.7, pp.463 to 466

Recorded March 5th, 1874

Liber "B" Patents, page 182

SAN JOSE ABSTRACT TITLE & TRUST CO.
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Catharine Kelly

DECLARATION of HOMESTEAD.

Dated Nov.29th, 1873

Certifies and declares that she is married and resides with her husband on the lot of land and premises situate in the County of Santa Clara and bounded as follows:

On the South West and North by the Penitencia Creek:and on the East by the San Jose Mission Road.

Being a portion of the Milpitas Rancho and containing 26 acres,more or less,and being the same land deeded by Henry Harris and wife to Catharine Kelly Feb'y 7th,1863 by Deed recorded in Book Q of Deeds,on page 507 and following.

That the actual cash value of the same is $1750.oo

That it is her intention to use and claim the said lot of land and premises together with the dwelling house thereon and its appurtenances as a Homestead.

Selects and claims the same as a Homestead.

Ackg'd Nov.29th,1873

By Catharine Kelly,wife of Joseph Kelly

Before D.C.Bailey,County Recorder.

By Theo.W.Thomas,Deputy.

Recorded Nov.29th,1873

Liber C.of Homesteads,page 87

SAN JOSE ABSTRACT TITLE & TRUST CO.
SAN JOSE, CAL.

Catharine Kelly and

Joseph Kelly

Abandonment of Homestead.

Dated Aug.20th,1891

Vacate,abandon,annul and set aside the Homestead made on Nov.29th, 1873 by Catherine Kelly wife of Joseph Kelly,homesteading that tract of land in Santa Clara County,being about 32 acres of land near Milpitas and described as follows:

Bounded on the North by the Penitencia Creek and Almshouse property: on the East by the public County Road leading from San Jose to Milpitas:and on the South West and West by the Penitencia Creek and which said Declaration of Homestead was recorded in Book C of Homesteads, page 87

(Signed) Catharine her X mark Kelly

Joseph his X mark Kelly

"Witness--to signatures:

C.W.Quilty

Robert Welch."

Ackg'd August 20th,1891

By Joseph Kelly,

and by Catharine Kelly,wife of said Joseph Kelly.

Before C.W.Quilty N.P.

Recorded Aug.20th,1891

at 50 minutes past 3 o' clock P.M.

Liber A.Abandonment of Homestead,page 365

SAN JOSE ABSTRACT TITLE & TRUST CO.
SAN JOSE, CAL.

Catherine Kelly

To

Joseph Kelly,

(husband of said Catherine Kelly)

and Mary Lyons,

DEED

Dated Aug.20th,1891

Cons: Love and Affection and $1.00

Does give,grant,alien and convey and confirm unto the second parties and to their heirs and assigns all that parcel of land situate in the County of Santa Clara and described as follows:

That certain 32 acres of land,more or less,situate near Milpitas, Santa Clara County,California,and described as follows: Bounded on the North by the County Almshouse Property and the Penitencia Creek:on the East by the County Road leading from San Jose to Milpitas and on the South,South West and West by said Penitencia Creek.

The grantor herein declares the above to be her separate estate and conveys the same to the- grantees herein under the following limitations,to wit: The estate and interest hereby conveyed to the said Joseph Kelly to be a life estate and interest in said property during the term of his natural life with remainder in fee to the above named Mary Lyons.

her
(Signed) Catherine X Kelly (Seal)
mark

Witness: At the request of
Catherine Kelly,I assisted her
in making her signature and

SAN JOSE ABSTRACT TITLE & TRUST CO.
SAN JOSE, CAL.

have signed my name hereto as witness:

C.W.Quilty,

T.J.Sinnott.

Ackg'd Aug.20th,1891

By Catherine Kelly (wife of Joseph Kelly)

Before C.W.Quilty N.P.

Recorded Aug.20th,1891

at 52 minutes past 3 o'clock P.M.

Liber 137 of Deeds,page 466

T A X E S.

State and County.

Lot 5 Milpitas Rancho.

Fiscal years

1869-70

To | Paid

1890-91

1891-92 Now a lien.

N O J U D G M E N T L I E N S.

The foregoing Abstract consisting of pages ONE to 22 inclusive, made at San Jose, Cal. September Twenty sixth, 1891 at Nine o'clock A.M.

SAN JOSE ABSTRACT, TITLE and TRUST COMPANY,

By J. C. Edwards Manager.

Continuation of The Foregoing Abstract.

AS TO

THE SAME PROPERTY

Mrs. Mary Lyons, (a widow)

TO

Owen Quigley

D E E D.

Dated October 8th.1891.

Cons.$1.oo

Grant,bargain,sell,convey and confirm unto the said party of the second part and to his heirs and assigns forever,all that certain lot, piece or parcel of land situate in the County of Santa Clara,and particularly described as follows,to wit:-

All the property and land and all the right,title and interest in any land or lands now and at the date hereof of which I may now stand possessed or to which I may have any claim,the same standing in my name in the Office of the County Recorder of Santa Clara County as particularly as the same may now be,described as follows:

Bounded on the North by the Poor House Farm; on the South and West by lands of O'Toole; on the East by the Mission Road leading from the City of San Jose to the Mission of San Jose,said tract being bounded on the North West,on the North and on the South West by the Penitencia Creek and on the East by the County Road aforesaid.

her
Mrs. Mary x Lyons. (SEAL)
mark

Witness to mark:-

T. J. Sinnott

Acknd. October 8th.1891.

(By Mrs. Mary Lyons,a feme sole)

SAN JOSE ABSTRACT TITLE & TRUST CO.
SAN JOSE, CAL.

Before John H. Yoell,N.P.

Recorded October 21st.1891.

Book 140 Deeds,Page 261

TAXES

STATE AND COUNTY

Fiscal years,

1891-92	1st. Installment, PAID
	2nd. " NOW A LIEN AND PAYABLE.

NO JUDGMENT LIENS.

The foregoing Continuation consisting of pages 23 to 26 inclusive, made at SAN JOSE, CAL. January 29th. 1892 at 9 o'clock A.M.

SAN JOSE ABSTRACT, TITLE AND TRUST COMPANY

By L. C. Edwards Manager.

Continuation
of
The Foregoing Abstract.

AS TO

THE SAME PROPERTY.

In the Superior Court of the County of Santa Clara,

State of California.

Joseph Kelly

- vs -

Mary Lyons and

Owen Quigley

Reg. N. Page 372 Case 9323.

1892

Jan. 30. Complaint filed.

Plaintiff alleges that ever since September 18, 1869, he has been and he is now, owner and in the possession and entitled to the possession of the following described land, situate in the County of Santa Clara, State of California, described as follows, to-wit:-

Being a part of the rancho Milpitas or San Miguel, beginning at a tree marked "H" standing on the East bank of the Penitencia Creek and running thence North 11° West 6.50 chains to a fence on the West side of the road from Milpitas to San Jose; thence along the West side of said road North 18 1/2° West 33.05 chains to a post marked "K" and "N" and proceed thence South 61 1/2° West 37 links to the middle of the Penitencia Creek; thence up and along the middle of said creek to the place of beginning. Containing 32.31 acres and being Lot No. 5 par-

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titioned and set apart to plaintiff and his wife Catherine Kelly, by a final decree in partition entered September 18, 1869, in an action then pending in the District Court of the Third Judicial District, in the County of Santa Clara, State of California, wherein Frederick Chrighton and others were plaintiffs and James C. Gould and others were defendants; which said decree is recorded in Judgment Book "E" of said Court on page 91.

That the defendants above named claim to have an interest in the said land which is adverse to this plaintiff.

That such claim of the defendants is without any right whatever, and that the said defendants have not, and that neither one of them has any right, title or interest whatever in or to the said land, or any part thereof.

WHEREFORE plaintiff prays judgment as follows, to-wit:-

I. That said defendants and each of them be required to set forth the nature of their several claims in and to said land.

II. That such claims of the defendants and each of them be adjudged to be void.

III. That defendants and each of them __ forever enjoined and debarred from asserting any claim to said land or any part thereof.

IV. That the plaintiff have and recover his costs from the defendants.

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1892	(Duly verified) W. A. Bowden and Jackson Hatch Attys. for Plaintiff.
	N O T E :- Notice of pendency of action was recorded in the office of the County Recorder of Santa Clara County on January 30, 1892, in Liber "3" of Lis Pendens, page 361.
Jan. 30.	Summons issued.
Feb. 8.	Order granting defendants ten days in addition to the time allowed by law within which to appear, filed.
" 19	Demurrer of defendants filed.
" "	Motion to strike out from the complaint of plaintiff the following "which said decree is recorded in Judgment Book "E" of said Court on page 91", filed.
" 26	Motion to strike out part of plaintiff's complaint argued, submitted and granted.
" "	Demurrer of defendants argued and submitted and overruled. 10 days to answer.

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Mar. 5. Answer and Cross-Complaint of defendants filed.

Make a general denial and aver that the defendant Owen Quigley, is and was, at and before the commencement of this action, the owner in fee of the lands and premises in said complaint described, subject to an estate in favor of and to said plaintiff Joseph Kelly, for and during the life of said Joseph Kelly.

That the only interest, right or estate of said Joseph Kelly in or to said lands and premises, is an estate for and during his natural life and no more, with the remainder thereafter in favor and to the defendant Owen Quigley in fee.

That they are informed and believe and therefore state the fact to be, that on February 7, 1863, one Catherine Kelly became, and was the owner in fee in her own right and as her sole and separate property and estate of certain lands and premises which were then a portion of a larger tract of land known as the Milpitas Rancho and described as follows, to-wit:- Commencing on the South East by a tree marked "H" on the line of lands then owned by Charles Clarke and bounded on the South and West by the Penitencia Creek to lands then occupied by Harris; thence along the Mission Road to the place of beginning, and containing 26 acres, more or less.

That said Catherine Kelly had purchased said premises

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1892 with her own and individual money and property which said money and property she acquired while she was a single woman. That the Deed of Conveyance of said premises by the previous owner thereof was made to and in the name of said Catherine Kelly, for and by reason of her said purchase as aforesaid, and that said Katherine Kelly thereupon entered into the possession thereof and held and maintained said possession continuously until August 20th, 1891.

That thereafter and while said Katherine Kelly was said owner of said premises as aforesaid, and in possession thereof and on April 26, 1869, an action was commenced in the District Court of the Third Judicial District of the State of California. and for the County of Santa Clara, by one Frederick Crighton, and divers other persons against one James C. Gould and divers other persons, for the partition of said Rancho Milpitas among the several tenants in common thereof.

That the plaintiffs in said action other than said Catherine Kelly, employed C. T. Ryland, Esq., as their Attorney to institute and prosecute said action.

That the plaintiff herein Joseph Kelly, joined with said Frederick Crighton and divers others of said plaintiffs, as plaintiffs in that said action.

That said Joseph Kelly was then the husband of said Catherine Kelly.

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That said Joseph Kelly represented to said Ryland that he was a tenant in common in said Rancho and was the owner of an equal undivided half of said premises hereinbefore described as a tenant in common with said Catherine Kelly and by means of said representations so made to said Ryland, he induced said Ryland to join said Joseph Kelly and said Catherine Kelly as plaintiffs in said action, and to aver in the complaint filed therein by him, that said Joseph Kelly and Catherine Kelly were two of the tenants in common in said Rancho Milpitas.

That said representations so made by said Joseph Kelly to said Ryland were false, and so known to said Joseph Kelly so to be false at the time they were made, and were made for the purpose of deceiving said Ryland, and of defrauding said Catherine Kelly and thereby obtaining an unjust advantage over her.

That said Catherine Kelly was wholly ignorant of the fact that said representations had been made by said Joseph Kelly and had no knowledge of the manner in which said action was commenced or was conducted.

That said Joseph Kelly had and exercised the sole management of said action of partition so far as the interests of said Catherine Kelly were affected, and without her knowledge or advice.

That thereafter and on May 18, 1869, an Interlocutory Decree was rendered and entered in said action pursuant to

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1892 the allegations of the complaint filed therein as aforesaid wherein, among other things it was decreed, that said Joseph Kelly and his said wife, Catherine Kelly, were the owners of an undivided 26/3941 part of said Rancho Milpitas.

That thereafter and on September 18, 1869, a Final Decree was made and given in said action wherein and whereby the land and premises described in the complaint in this action was set apart in severalty to said Joseph Kelly and to said Catherine Kelly.

That by a mistake and by reason of the inadvertence of the persons who prepared said decree, said decree among other things provided that the premises described in the complaint in this action be set apart in severalty to said Joseph Kelly and his wife Catherine Kelly, jointly.

That the provisions in said decree providing the setting apart jointly said premises, these defendants are informed and believe and therefore aver the fact to be, was inserted by mistake of the person who prepared and made the draft of said decree, and without the knowledge of the Attorneys for the plaintiffs therein, or of said Court or of the Judge thereof.

That said decree in that particular did not conform to the allegations of the complaint or of the interlocutory decree therein, and was not the finding or decision of the Court and was a fraud upon said Court, and upon

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1892 said Catherine Kelly and was not in conformity with the facts or the evidence adduced in said action ;

That said Catherine Kelly never knew that said Final Decree was so entered or given and these defendants did not know or learn thereof until after the commencement of this action by said Joseph Kelly;

Defendants aver that thereafter and on the 20th day of August, 1891, said Catherine Kelly by a deed of conveyance signed and executed by her, sold and conveyed to said Joseph Kelly, an estate for life in and to said lands and premises described in his said complaint, and therein and thereby sold and conveyed to the defendant, Mary Lyons, the remainder in fee therein after said life estate;

That thereafter and on October 6, 1891, the defendant Mary Lyons, by a deed of conveyance, signed and executed by her, sold and conveyed said premises and all her right, title and interest therein, to the defendant Owen Quigley;

That thereafter, the said Owen Quigley, became, and from thence hitherto has been and is the owner and holder of said premises and all the estate and title thereto, except the said life estate of the plaintiff Joseph Kelly;

That said Joseph Kelly is in the possession of said premises holding the same under and by virtue of said conveyance to him by said Catherine Kelly of an estate for his life with remainder in fee therein to the defendant, Owen Quigley;

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Pray the judgment of this Court, that the defendant Owen Quigley, be adjudged the owner in fee of said lands andepremises, subject only to the life estate therein of said Joseph Kelly for and during his life;

Further answering, defendants aver all the facts as hereinbefore set forth in said answer and ask to have the same read and considered as here repeated.

Further answering, defendants aver that they are informed and believe and therefore aver the fact to be that on or about August 24, 1891, said Catherine Kelly departed this life without leaving any will or testamentary disposition of her estate other than said deed of conveyance from her to said Mary Lyons and Joseph Kelly; that said Catherine Kelly had no property or estate of any kind or character at and before the time of her death other than said land and premises in said complaint and in said deed of conveyance described;

That said Catherine _____ at the time she signed and published said deed, was of sound mind but was suffering from mortal disease of which she died on August 24, 1891;

That said Catherine Kelly knew and recognized the fact that she was about to die, and made and published said deed and disposition of her property in expectation of her immediate death;

That said deed and disposition was made and signed by said Catherine Kelly in the presence of two witnesses

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who signed their names to said instrument, and in her presence, and in the presence of each other, as such attesting witnesses, and she signed her name thereto in the presence of each of said witnesses, and she then and there declared and published said instrument to be her will and wish as and for the final disposition of all her property and estate, in anticipation of her immediate death;

That a copy of said deed is hereto attached marked "Exhibit A" and made a part of this answer;

That said Catherine Kelly died at the County of Santa Clara in said State of California, and was a resident of said County and State at and for a long time next before her said death;

That said Catherine Kelly was at the time of her death, over the age of 18 years, and in all things competent to make a will;

That said Catherine Kelly, left surviving her, Joseph Kelly, her husband, and said Mary Lyons, her sister, and Mary Quigley and Annie Costello, children of Thomas Costello, deceased, who was a brother of said Catherine Kelly, who are her sole heirs at law;

Pray the judgment of this Court, that the defendant, Owen Quigley, be adjudged the owner in fee of said lands and premises and entitled to the possession thereof as against said plaintiff;

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And these defendants as a cross complaint and for the purpose of obtaining affirmative relief, aver and show to the Court that they are informed and believe and therefore aver the fact to be that on October 28, 1860, one Catherine Costello, intermarried with the plaintiff Joseph Kelly, and they remained so wife and husband until on or about August 24, 1891, when said Catherine _____ departed this life;

That on February 6, 1863, said Catherine Kelly purchased from one Henry Harris, a certain tract or parcel of land which was a portion of the Rancho Milpitas, which said Rancho was held and owned in common with divers other persons;

That the purchase price for said land was the sum of $600.00, and that the money with which said purchase was made was acquired by said Catherine ____ before her said marriage with said Joseph Kelly, and was her individual and separate property;

That the deed of conveyance for said premises was made by said Harris to and in the name of said Catherine Kelly;

That said premises were described in said conveyance as follows:- Situate in the County of Santa Clara, State of California, and bounded as follows:- Commencing on the South East at a tree marked "H" standing on the line of lands owned by Charles Clarke; South and West by the Penitencia Creek to lands occupied by said Harris;

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thence along the Mission road to the place of beginning, being a portion of the Milpitas Rancho, containing 26 acres, more or less.

That said Catherine ___ entered into possession of said premises under said deed of conveyance to her and continued in possession thereof until her death as aforesaid, claiming to be the sole and exclusive owner thereof with the knowledge and consent and acquesence of her said husband, Joseph Kelly;

That thereafter and on April 26, 1869, one Frederick Crighton with divers other persons who were tenants in common of said Rancho Milpitas with said Catherine Kelly, caused an action for the partition of said Rancho to be commenced in the District Court of the Third Judicial District of the State of California and in and for the County of Santa Clara;

That one C. T. Ryland, an Attorney at Law, was employed by the said Crighton and divers other of said co-tenants, to commence and prosecute said action; that said Joseph Kelly also joined in said employment and represented to said Ryland that he, said Joseph Kelly, and his wife Catherine Kelly were tenants in common of said portion of said Rancho Milpitas so conveyed as aforesaid to said Catherine ... by said Harris;

That said Ryland believed said representations of said Joseph Kelly and acted upon the same and in that be-

1892 half prepared and filed a complaint in said action, wherein he included said Joseph Kelly and said Catherine Kelly as tenants in common, and as equal owners of said premises and interests so conveyed to said Catherine ___ ;

That in said action one James C. Gould and divers other persons, were also tenants in common in said Rancho, and were made defendants in said action;

That thereafter, diverse proceedings were had in said action of partition to the end, that on May 18, 1869, an Interlocutory Decree was made, given and filed in said action, wherein it was among other things, adjudged that said Joseph Kelly and Catherine Kelly were owners and tenants in common of an undivided 26/3941 part of said Rancho, and were entitled to partition to them of a segregated portion of said Rancho, equal to said undivided interest;

That thereafter and on September 18, 1869, a Final Decree was made, given and rendered in said action of partition wherein and whereby among other things, it was adjudged and decreed that said Joseph Kelly and his said wife Catherine Kelly were allotted, and there was set apart to them jointly, the premises described in the complaint in this present action;

That said decree setting apart said premises to said Joseph Kelly and Catherine Kelly jointly, was rendered and made by the inadvertence and mistake of the person who

1892 who prepared said decree and without the knowledge or consent of said Catherine Kelly and that the Court and the Judge thereof, was deceived in that particular, in signing and making said decree;

That said decree, both interlocutory and final were frauds upon the rights of said Catherine Kelly; That in fact she was the sole owner in fee of said premises, and was entitled to have set apart to her, the whole thereof in severalty; that she never knew or learned that said interlocutory decree or said final decree were ever made or given, and died wholly ignorant of the fact that she was the owner of only the one half of said premises;

And defendants aver that thereafter and on August 20, 1891, said Catherine Kelly while yet being the owner of said premises and in the possession thereof by a deed of conveyance of that date, sold and conveyed said premises to said Joseph Kelly and to the defendant, Mary Lyons, to-wit, to said Joseph Kelly, an estate therein for his life and the remainder in fee to said Mary Lyons;

That thereafter and on October 8, 1891, said Mary Lyons by a Deed of Conveyance of that date, sold and conveyed all of her right and interest in and to said premises to the defendant, Owen Quigley;

Pray the judgment of this Court,

1st. -- That it be adjudged that said Catherine Kelly was the owner in fee in her own right of the lands

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1892. and premises described in said complaint on and prior to April 26, 1869;

2nd. -- That the interlocutory and final decree in said action for partition hereinbefore referred to, so far as the same affects the interests of said Catherine Kelly, be reformed and corrected by adjudging that said premises described in the complaint herein, was the separate and individual property of said Catherine Kelly, and that said Joseph Kelly had no interest or estate therein;

3rd. -- That it be adjudged that the defendant Owen Quigley, is the owner in fee of said premises in remainder, subject to the life estate therein of said Joseph Kelly, for and during his natural life;

4th. -- That these defendants have judgment for their costs in this behalf expended.

Frs. E. Spencer,

Attorney for Defendants.

Annexed to and forming a part of foregoing Answer and Cross Complaint in "Exhibit A" therein referred to. (Duly verified).

Service of copy of Answer and Cross Complaint admitted March 5, 1892, by Jackson Hatch and William A. Bowden, Attorneys fo plaintiff as per endorsement.

Mar. 10. Plaintiff's answer to defendants' Cross Complaint filed. Makes a general denial of the allegations contained in

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1892	said Cross Complaint.
	Prays that neither of said defendants take anything by reason of their cross complaint, and that he have judgment for his costs.
	(Duly verified)
	Service of copy of answer admitted March 10, 1892, by Frs. E. Spencer, Attorney for defendants, as per endorsement.
Mar. 9.	Summons returned, served and filed.
May 5.	Cause partially heard and continued to May 11, 1892.
" 11	Cause heard, evidence closed and continued to May 13, 1892, for argument.
" 13	Cause argued, submitted and taken under advisement.
July 15	Opinion filed.
" "	Order for Judgment, favor of plaintiff.
" "	Amendment to plaintiff's complaint, filed.
	Upon motion of plaintiff's counsel and good cause being shown therefor, it is hereby ordered that the plaintiff's complaint on file herein, be and the same is hereby amended so that the prayer thereof shall read as follows, to-wit:-

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1892 First:- That the plaintiff is the owner in fee simple and is in possession and entitled to the possession of the land hereinabove described.

Second:- That neither the said Mary Lyons nor the said Owen Quigley has any right, title or interest in or to the said lands or any part thereof.

Third:- That the said defendants Mary Lyons and Owen Quigley, and each of them, be forever enjoined and debarred from asserting any claim to the said land or any part thereof.

Fourth:- That the plaintiff have and recover his costs from the defendants.

Fifth:- For such other or further relief as to the Court shall seem meet and proper.

Dated July 23, 1892.

(Signed) W. G. Lorigan, Judge.

July 30 Findings filed.

From the evidence in this case, the Court finds the following facts, to-wit:-

- I -

That one Joseph Kelly and one Catherine Costello intermarried October 28, 1860, and thereafter lived together as husband and wife in Santa Clara County, California, until the death of said Catherine, which occurred in August 1891.

- II -

That on February 7, 1863, one Henry Harris and Mary

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1892 Harris, his wife, executed, acknowledged and delivered to said Catherine Kelly, formerly Catherine Costello, a deed whereby they granted to the said Catherine, the land described in the plaintiff's complaint; being also the same land referred to and described in the answer and cross complaint of the defendants; and that thereupon the said Catherine and her husband, the plaintiff herein, entered into the possession of said land and thereafter continued in the possession thereof up to the time of the death of said Catherine, as above stated; and that the plaintiff has been, since the death of said Catherine, and is now in the sole and exclusive possession of said land, claiming the same as his own.

- III -

That the purchase price paid by the said Catherine to said Henry Harris and Mary Harris, upon the delivery to her of said deed, was the sum of $600.00, and that said sum of money was composed of moneys that had been earned by the said Catherine and the said plaintiff, her husband, after their said marriage and while they were living together as husband and wife; and that the said sum of $600.00 was the property of the marriage community so existing between the said Catherine and the plaintiff. That no part of the purchase price of the said land above mentioned was acquired by the said Catherine in any other capacity than as a member of the said marriage community.

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- IV -

That said Catherine died intestate in Santa Clara County California, in the month of August, 1891, and that ever since her death, the plaintiff has been and he is now the sole and exclusive owner and in the possession and entitled to the possession of the land hereinbefore referred to.

- V -

That the defendant Owen Quigley, is not now, nor has he ever been the owner in fee, or otherwise of the land hereinbefore referred to, or any part thereof; nor is the interest of the plaintiff herein merely a life estate in the said land, nor is it anything less than an estate in fee simple.

- VI -

That the said Catherine Kelly was not, on February 7, 1863, nor was she ever at any time, the owner in fee in her own right or as her sole and separate property and estate of the said land or any part thereof, nor of any interest therein, save only as a member of the said marriage community existing between her and the plaintiff;

That said Catherine Kelly did not purchase said land or any part thereof, with her own separate or individual money

That the said deed was so executed and delivered to said Catherine Kelly with the consent of the plaintiff, but without any intention on the part of the plaintiff, that the same should operate as a deed of gift from him to her, but with the intention that she should hold the said prop-

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1892 erty as community property.

- VII -

That on April 26, 1869, an action was commenced in the District Court of the Third Judicial District of the State of California, in and for the County of Santa Clara, by one Frederick Crighton and others against one James C. Gould an and others, for the partition of the Rancho Milpitas, of which the land hereinbefore referred to was a part among the several tenants in common thereof.

That among the plaintiffs in said action were the said Catherine and her husband, the plaintiff in this action.

That the plaintiffs in said action employed C. T. Ryland Esq., as their attorney therein.

That the plaintiff in this action attended to the matter of the said partition suit for himself and the said Catherine, and also to the employment of said Ryland as aforesaid.

That said plaintiff made no false or fraudulent representations whatever concerning the said land or the interest of said Catherine, or his own interests therein, to the said Ryland, and made no representations of any kind touching or concerning the same for the purpose of deceiving said Ryland, or of defrauding or deceiving said Catherine, or of thereby obtaining any unjust advantage over said Catherine, but on the contrary, the said Catherine was fully informed by said plaintiff of all that took place in

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1892 and about and concerning the said action and was fully conversant with the result thereof.

That on May 18, 1869, there was given and made in said action, an interlocutory decree, wherein among other things, it was decreed that the said plaintiff in this action and the said Catherine were the owners of an undivided 26/3941 of the said Rancho Milpitas, and that on September 18, 1869, a final decree was given and made in said action, whereby the said land described in the pleadings in this action was set apart in severalty to said Joseph Kelly, the plaintiff, and his said wife Catherine.

That by a mistake and by the reason of the inadvertence of the persons who prepared said decree, the decree provided, among other things, that the land described in the complaint in this action be set apart in severalty to said Joseph Kelly, the plaintiff, and to said Catherine, his wife, jointly.

That said mistake was made without the knowledge of said C. T. Ryland, or of the Court, or the Judge thereof.

That in that part the said decree did not conform to the allegations of the complaint or of the interlocutory decree therein and was not the finding or decision of the Court, but that the same was not a fraud upon the said Court nor upon said Catherine, nor was the said Catherine, nor the said Court, nor the Judge thereof, deceived in the particular mentioned, in signing or making said decree by any

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1892 false or fraudulent or other representation of the plaintiff in this action, or any body else.

- VIII -

That on August 2, 1891, the said Catherine executed, acknolwedged and delivered a deed purporting to convey to the plaintiff in this action, Joseph Kelly, an estate in said land for the term of his life, and the remainder in fee to the defendant in this action, Mary Lyons.

- IX -

That thereafter and before the commencement of this action, the said Mary Lyons executed, acknowledged and delivered a deed purporting to convey all of her interest in and to the said land to her co-defendant, Owen Quigley.

That the said deed from the said Catherine to Mary Lyons and the said deed from Mary Lyons to the defendant Owen Quigley were placed on record in the office of the County Recorder of Santa Clara County, prior to the institution of this suit.

- X -

That said Catherine had no property and estate at the time of her death, save her said community interest in the said land.

That when she executed the said deed to the said Mary Lyons, she did not intend or declare the same to be her last will and testament, nor was the said deed in fact her last will and testament.

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That at the time of her death, the said Catherine was a resident of Santa C ara County, California, and was over 18 years of age, and left surviving her the plaintiff, Jodeph Kelly, her husband; the defendant Mary Lyons, her sister and Mary Quigley and Annie Costello, children of a deceased brother of said Catherine.

- XI -

That defenant Mary Lyons did not have or claim to have any right, title or interest in or to said land or any part thereof, at the time of the commencement of this action nor has she since had or claimed, nor does she now have or claim any right, title or interest thereto or therein.

From the foregoing facts, the Court draws the following Conclusions of Law:-

: I -

That at the time of the death of the said Catherine, the land hereinbefore referred to was the community property of her and the plaintiff herein, and that the name thereupon became the property of the Plaintiff herein.

- II -

That the deed from the said Catherine to Mary Lyons was void because the property being community property at the time of its execution, she had no power to convey it.

- III -

That as Mary Lyons acquired no title to the said land by reason of the said deed, the deed from her to the defendant Quigley, was void and conveyed in title to him.

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- IV -

That the plaintiff herein is entitled to a judgment in accordance with the prayer of his complaint against defendant Quigley only.

Let judgment be rendered accordingly.

Dated July 30, 1892.

(Signed) W. G. Lorigan, Judge.

July 30. Judgment in accordance with foregoing Findings and Conclusions of law filed.

" " Roll filed. Judgment docketed.

Aug. 2. Memorandum of Costs & Disbursements filed.

" " Notice of Decision and Affidavit of Service of same on Aug. 2, 1892, on Frs. E. Spencer, Attorney for Defendants, filed.

Dec. 22. Motion for New Trial denied.

" 27. Order setting aside order denying motion for new trial on the ground that at the time said motion was denied, the plaintiff was dead and that no substitution of any Administrator or other representative had been made as party plaintiff.

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Jan. 18. Motion and Order substituting the Administrator of the estate of Joseph Kelly, deceased, as plaintiff, entered.

Feb. 20. Motion and order denying motion for a new trial.

Aug. 3. Notice of Intention to move the Court on Aug. 11, 1893, to dismiss said action on the ground that the plaintiff has neglected to demand and have the judgment entered or recorded or otherwise for more than six months after the final submission of said action for decision and more than six months after the filing of the findings and decision directing judgment to be entered for plaintiff, filed.

Copy received August 3, 1893, by Jackson Hatch and W. A. Bowden, Attorneys for Plaintiff, as per endorsement.

Aug. 11. Affidavit of W. A. Bowden in opposition to said motion, filed.

" " Affidavit of Jackson Hatch in opposition to said motion, filed.

" " On motion of Frs. E. Spencer, Esq., Attorney for defendants, it is ordered that this action be dismissed, unless judgment be entered within 24 hours from the time of this order.

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Aug. 11.	Judgment entered in Judgment Book "R", page 453.

Joseph Kelly

— To —

Jackson Hatch and

W. A. Bowden.

MORTGAGE.

Dated June 21, 1892.

To secure the payment of Two Thousand One Hundred and Fifty ($2150.00) Dollars, on or before six months, with interest at the rate of 8 1/2% per annum, payable semi-annually, or to compound.

Mortgages all that parcel of land situate in the County of Santa Clara, and described as follows:

* Being a part of the Rancho Milpitas or San Miguel, beginning at a tree marked "H" standing on the East bank of the Penitencia Creek and running thence North 11° West 6.50 chains to a fence on the West side of the road from Milpitas to San Jose; thence along the West side of said road North 18 1/2° West 33.05 chains to a post marked "K" and "N" and thence South 61 1/2° West 37 links to the middle of the Penitencia Creek; thence up and along the middle of said creek to the place of beginning. Containing 32. 31 acres and being Lot No. 5 partitioned and set apart to Joseph Kelly and his wife Catherine Kelly by a final decree in partition entered September 18, 1869, in the action then pending in the District Court of the Third Judicial District in the County of Santa Clara, State of California, wherein Frederick Crighton and others were plaintiffs and James C. Gould and others were defendants which said decree is recorded in Judgment Book "E" of said Court on page 91. *

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Acknowledged June 21, 1892.

Before Hiram D. Tuttle, N. P.

Recorded June 21, 1892.

Liber "108" Mortgages, Page 237.

Superior Court of the County of Santa Clara.

In the Matter of the Estate

of

Joseph Kelly, Deceased.

Reg. H., p. 101. Estate 2964.

1892.

Dec. 13. Petition of J. K. Secord, M. D. for Letters of Administration, filed.

Shows:- That Joseph Kelly died on or about Dec. 7, 1892, in Santa Clara County, State of California, being at the time of his death, a resident of said County of Santa Clara, and leaving estate therein consisting of real and personal property.

That the value and character of said property are as follows, to-wit:

26 acres of land situated in the Town of Milpitas in said County and State of the value of about $2500.00 and personal property consisting of two horses, farming implements and household furniture of the probable value of $200.00.

That the estate and effects, do not exceed the value of $3,000.00.

That the next of kin and heirs at law of said deceased are two neices, age unknown, residing at Ireland in the Kingdom of Great Britian.

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1892 That due search and inquiry have been made to ascertain if said deceased left any will and testament, but none has been found, and according to the best knowledge, information and belief of petitioner, said deceased died intestate;

That petitioner is the Public Administrator of said Santa Clara County, California, and there are no relatives in this State of United States of said deceased, and therefore, as petitioner is advised and believes, entitled to Letters of Administration of said Estate.

Prays that a day of Court may be appointed for hearing this application, that due notice thereof be given to the Clerk and by posting notices according to law, and that upon said hearing and the proofs to be adduced, Letters of Administration of said Estate may be issued to him.

Dated, Dec. ... 1892.

(Signed) J. K. Secord, M. D.

C. D. Wright,

Attorney for Petitioner.

Dec. 13. Clerk's notice fixing Dec. 30, 1892, for hearing said Petition for Letters of Administration, filed.

" 17 Affidavit of G. W. Hayes, of posting on Dec. 17, 1892, exact and true copies of the Notice of Time and Place appointed for hearing said Petition for Letters of Administration in three of the most public places in the County

SAN JOSE ABSTRACT TITLE & TRUST CO.
SAN JOSE, CAL.

1892	of Santa Clara (naming them) filed.
Dec. 30.	Order continuing hearing of said Petition for Letters of Administration to January 6, 1893.
1893	
Jan. 6.	Order appointing J. K. Secord, Administrator of the Estate of said Deceased, and directing Letters of Administration to issue to him upon taking the oath, made, entered and filed. Pro. Rec. 42, P. 568.
" "	Letters of Administration (with oath annexed) issued to J. K. Secord, and filed. Recorded Book "E" Letters, P. 361.
Jan. 10.	Order of Publication of Notice to Creditors in some newspaper printed and published in the County of Santa Clara, at least once a week for four weeks, made, entered and filed. Pro. Rec. 42, P. 587
" 13	Order appointing John G. Bury, Thos. P. McAram and A. K. Whitton, Appraisers, made, entered and filed. Pro. Rec. 42, P. 612.
Feb. 24.	Affidavit of C. J. Owen, principal clerk of the San Jose Mercury Publishing and Printing Company, the printers

SAN JOSE ABSTRACT TITLE & TRUST CO.
SAN JOSE, CAL.

1893	of the San Jose Daily Mercury of Publication of Notice to Creditors in said newspaper, daily, for four successive weeks, from January 11, 1893, to February 11, 1893, inclusive, filed.
Feb. 24.	Claim of Jackson Hatch and W. A. Bowden for $2150.00 principal and $115.17 interest, being the amounts due on a Promissory Note secured by mortgage of record in Liber 108 of Mortgages, page 237, allowed, approved and filed.
May 13.	Inventory and Appraisement filed.

PERSONAL PROPERTY.

Appraised at	$143.00.

REAL ESTATE.

31 acres of real estate adjoining the County Alms House on Milpitas Road,	
Appraised at,	$5000.00
Total Appraised value,	$5143.00.

(Duly verified)

SAN JOSE ABSTRACT TITLE & TRUST CO.
SAN JOSE, CAL.

CONTINUED TAXES

STATE AND COUNTY.

Lot 5 Partition of Milpitas Rancho.

Fiscal years,

1891 - 92 — Sold and redeemed.

1892 - 93 — Paid.

1893 - 94 — Now a Lien.

NO JUDGMENT LIENS.

The foregoing CONTINUATION consisting of pages 27 to 63 inclusive, made at SAN JOSE, CAL., August 16th, 1893, at 9 o'clock A. M.

SAN JOSE ABSTRACT, TITLE AND TRUST COMPANY,

By L. C. Edwards Manager.

SAN JOSE ABSTRACT TITLE & TRUST CO.
SAN JOSE, CAL.

Continuation
of
The Foregoing Abstract.

AS TO

THE SAME PROPERTY

IN THE SUPERIOR COURT, COUNTY OF SANTA CLARA,

STATE OF CALIFORNIA.

Jackson Hatch, and

W. A. Bowden,

VS

J. K. Secord, Administrator of

the Estate of Joseph Kelly, deceased,

and James Stanley,

L I S P E N D E N S

Dated ----------

To have foreclosed a certain Mortgage alleged in the Plff's complaint to have been executed to the Plff by one Joseph Kelly, on June 21, 1892, and recorded on the same day in Book 108 of Mortgages, Page 237, Records of Santa Clara County, State of California, to secure the payment of a promissory note executed by the said Joseph Kelly, on June 21, 1892, for the sum of $2150.oo payable on or before six months after date, and bearing interest from its date until its payment at the rate of 8 1/2% per annum, payable semi-annually and compounding if not so paid as provided both principal and interest payable in U.S.Gold Coin and to secure a judgment for the sale of the premises hereinafter described, to satisfy the amount due the Plffs upon said note, and to obtain a deficiency judgment if any deficiency shall be fould against the said estate of said Joseph Kelly and which deft. J.K.Secord is the Administrator.

That the following is a description of the property af-

fected by said Mortgage, to wit:

All that parcel of land situate in the County of Santa Clara, State of California, described as follows: (Same as in said Mortgage)

E.M.Rosenthal,

Atty for Plffs.

Recorded Dec. 21, 1893,

Liber 4 of Lis Pendens, Page 53.

Reg. O. Page 159. Case 10061.

1893	
Dec.21	Complaint filed.
	Summons issued.
1894	
Jan.5	Summons returned and filed, with Affidavit of John T.Bury, (annexed) that on Dec.23, 1893, at the City of San Jose, County of Santa Clara, State of California, he personally served the annexed Summons upon the deft. J.K.Secord, Administrator of the Estate of Joseph Kelly, deceased, by then and there delivering to the said J.K.Secord, personally, a copy of said summons to which there was then and there attached a copy of Plff's Complaint in said action.
Jan.5	Default of deft. J.K.Secord, Administrator of the Estate of Joseph Kelly, deceased, entered.

1894	
Feb.9	Cause submitted. Decree in favor of Plffs ordered.
Feb.12	Motion and Order dismissing action as to deft. James Stanley, and directing that said order be entered as of Feb.9, 1894.
Feb.13	Decree of Foreclosure and Sale filed. Finds that there is now due to the Plffs. from said deft. J.K. Secord, as Administrator of the Estate of Joseph Kelly, deceased, the full sum of $2463.82 for principal and interest upon the debt and mortgage mentioned and set forth in the Complaint, which sum is to draw interest from the entry of this decree at the rate of 7% per annum, and that all the allegations in said Plff's complaint contained are true. Appoints C.M.Lorigan, Commissioner to sell the property hereinafter described, in the manner provided by law, for the sale of like property, by the Sheriff under execution. Said Commissioner to be sworn and give a bond before entering upon the discharge of his duties to be approved by this Court, in the sum of $2500.oo Directs that all and singular the mortgaged premises be sold at public auction by or under the direction of said Commissioner according to law, &c. and that said Commissioner out of the proceeds of said sale retain his fee ($10.) and pay to the

Pltffs or their Atty their costs taxed at $13.30 with interest at 7% per annum, and also the amount so found due as aforesaid, together with interest thereon at 7% per annum, from the date of this decree.

Following is a description of the property hereby authorized to be sold.

That parcel of land situate in the County of Santa Clara, State of California, described as follows:

(Same as in Liber 108 of Mortgages, Page 237, Kelly to Hatch, and Bowden.)

Done in open Court, February 9, 1894.

(Signed) W.C.Lorigan, Judge.

Decree recorded in Judgment Book A No.1 Page 56.

Feb.13 Roll filed. Decree Docketed.

Feb.13 Cost Bill filed.

Feb.17 Order of Sale issued.

Feb.21 Bond of Commissioner approved and filed.

Feb.21 Oath of Commissioner filed.

Mch.24 Order of Sale returned fully satisfied by sale of mortgaged premises on March 24, 1894, to Jackson Hatch and W.A.Bowden, for $2552.23 and filed.

Jackson Hatch, and

W. A. Bowden,

——VS——

J. K. Secord, as Administrator of

the Estate of Joseph Kelly, deceased,

By C.M.Lorigan, a Commissioner duly

appointed by the Superior Court of the County

of Santa Clara, California, in the action hereinafter mentioned to make sale of the property hereinafter described.

—— TO ——

Jackson Hatch and

W. A. Bowden,

D E E D

Dated Cons. $2555.23 Oct.8, 1894.

Recites: That in and by a certain Judgment and Decree made and entered by said Superior Court on February 13, 1894, in a certain action then pending in said Court wherein Jackson Hatch and W.A.Bowden were the Plffs and J.K. Secord, as Administrator of the Estate of Joseph Kelly, deceased, was deft. it was, among other things ordered, adjudged and decreed that all and singular the mortgaged premises described in the Complaint and in said Action and apecifically described in said judgment and decree should be sold at public auction by the first party, as such Commissioner, in the manner required by law, and according to the course and practice of said Court, &c.

And said Commissioner did at the hour of 11 o'clock A.M.on March 24, 1894, after due public notice had been giv-

en, as required by the laws of this State, and the course and practice of said Court, duly sell at public auction in said County of Santa Clara, agreeably to the said judgment or Decree, and the provisions of law, the premises in said Decree or Judgment mentioned at which sale the premises in said Judgment or Decree and hereinafter described, were fairly struck off to the said Jackson Hatch and W.A. Bowden, the parties hereto of the second part, for the sum of $2555.23, they being the highest bidders, and that being the highest sum bid for the same.

And second parties thereupon paid to said Commissioner the said sum of money so bid by them and said Commissioner thereupon made and issued the usual certificate in duplicate, of the said sale, in due form of law, and delivered one thereof to the said purchaser and caused the other to be filed in the office of the County Recorder of said County of Santa Clara.

And, more than six months have elapsed since the date of the said sale and no redemption has been made of the premises so sold,

NOW, &c. Does grant, bargain, sell, convey and confirm unto the second parties and to their heirs and assigns forever, all that parcel of land situate in the County of Santa Clara, described as follows:

(Same as in Liber 108 of Mortgages, Page 237, Kelly to Hatch and Bowden.)

Acknd. Oct. 8, 1894,

Before E. M. Rosenthal, N.P.

Recorded Oct.9, 1894,

Liber 173 of Deeds, Page 475.

Commissioner's Certificate of Sale,

Recorded Mch.31, 1894,

Liber 3 Certificates of Sales, Page 206

TAXES

STATE and COUNTY

Fiscal years,

1893-94	PAID
1894-95	PAID
1895-96	PAID
1896-97	NOW A LIEN

NO JUDGMENT LIENS

The foregoing CONTINUATION consisting of pages 64 to 72 inclusive, made at SAN JOSE, CALIFORNIA, JULY Twenty-ninth, 1896 at Nine o'clock A.M.

SAN JOSE ABSTRACT COMPANY

By J. M. Pitman

Acting Manager.

Continuation of The Foregoing Abstract.

AS TO

THE SAME PROPERTY

Jackson Hatch and

William A.Bowden

TO

Carrie H.Bundy

MORTGAGE

Dated July 29,1896.

Mortgages same property as in Liber 108 of Mortgages,page 237 Joseph Kelly to Jackson Hatch et al)

To secure the payment of a promissory note of even date herewith for the sum of $1500 payable two years after date with interest at 9% per annum payable semi annually or to compound.

Also as security for further advances.

Acknd. July 30,1896.

Before Wesley Pieper, N.P.

Recorded July 30,1896.

Liber 123 of Mortgages,Page 582.

Cancelled by a Release

Dated April 9,1902.

Executed by Carrie H. Bundy Carr.

Recorded April 12,1902.

Liber U of Releases of Mtgs, page 400.

Entered by San Jose Abstract Co.

By Steves

SEARCHER.

T A X E S

S T A T E & C O U N T Y

Fiscal years

1896-97)
)
TO — : PAID.
)
1900-1901)

1901-1902 Land 1st Installment Paid.

2nd Installment Due and Payable.

Mortgage Int. All Paid.

1902-1903 Now a Lien.

N O J U D G M E N T L I E N S

The foregoing CONTINUATION consisting of pages 73 to 75, inclusive, made at SAN JOSE, CALIFORNIA, MARCH THIRTY FIRST, 1902 at Nine o'clock A.M.

SAN JOSE ABSTRACT COMPANY.

By J. C. Edwards

Manager.

Continuation
of
The Foregoing Abstract.

AS TO

THE SAME PROPERTY.

Jackson Hatch and
William A. Bowden,
of the first part
Willis S. Clayton,
of the second part
and
Carrie Bundy Carr
of the third part

DEED OF TRUST.

Dated January 29,1902

To secure to third party the payment of the sum of Fifteen Hundred Dollars, 2 1/2 years after date with interest and additional sums.

Convey unto second party, his successors or assigns the real property situate in the County of Santa Clara, described as follows, to wit:-

(Same as in Liber 108 of Mortgages, page 237 Kelly to Hatch et al)

Upon trust to be reconveyed to Jackson Hatch and William A. Bowden in case payment be made of all sums due third party, but in default thereof to be sold after advertisement according to law etc.

Acknd. April 10, 1902

Before Wesley Pieper, N.P.

Recorded April 10, 1902

Liber Q of Deeds of Trust, page 386.

T A X E S

S T A T E A N D C O U N T Y.

Lot 5 Milpitas Rancho.

Fiscal Years

1901-1902 Paid

1902-1903 Paid

1903-1904 Now a Lien.

N O J U D G M E N T L I E N S.

The foregoing CONTINUATION consisting of pages 76 to 78 inclusive, made at SAN JOSE, CALIFORNIA, OCTOBER TENTH, 1903 at Nine o'clock A.M.

SAN JOSE ABSTRACT COMPANY.

By J. C. Edwards

Manager.